

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM**

**533-5800**

**DATE:** September 20, 2007

**TO:** Richard Haas, Deputy Chief of Public Works

**FROM:** Tom Zeleny, Deputy City Attorney

**SUBJECT:** Declaration of Water Shortage Emergency

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Per your request, this memorandum outlines the procedural steps necessary for the City to declare a water shortage emergency and implement "Stage 1" water conservation measures. Stage 1 conservation measures are the lowest, or least severe, of four stages. Stage 1 is triggered "when the *possibility* exists that the City of San Diego Water Department will not be able to meet all of the water demands of its customers." SDMC § 67.3806(b) (emphasis added). Stage 1 calls for voluntary compliance with the conservation measures set forth under Stage 2.

The City must hold a public hearing prior to declaring a water shortage emergency, unless there is an event damaging the water system that creates an immediate emergency. Water Code § 351; SDMC § 67.3804(b); City Attorney MOL dated August 14, 1979. Notice of the time and place of the hearing must be published in the City's official newspaper at least seven days prior to the hearing. Water Code § 352. Implementation of conservation measures beyond Stage 1 also requires public announcement and publication in the City's official newspaper for three consecutive days after adoption. SDMC § 67.3807.

There is a sufficient basis to declare a water shortage emergency and implement Stage 1 conservation measures. A water shortage emergency may be declared for threatened shortages that have yet to occur. *San Diego County Water Authority v. Metropolitan Water District of Southern California*, 117 Cal. App. 4th 13 (2004). Judge Wanger's ruling in *Natural Resources Defense Council v. Kempthorne* severely restricts the operation of pumps that send water from the State Water Project to Southern California, upon which San Diego County relies on for about a third of its water. Though Judge Wanger's ruling regarding the Delta Smelt and the State Water Project may not yet be final or implemented, the threat his ruling poses to the City's water supply is enough to declare a water shortage emergency. The City's 2005 Urban Water Management Plan suggests a threshold of a 5% water supply shortage for Stage 1 conservation measures; a threshold we understand will likely be met.

The declaration of a water shortage emergency may be done by resolution, as has been done in the past. See Resolution No. R-276361. The resolution is subject to the Mayor's veto power.